IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1022 of 2005
in
SUMMONS FOR JUDGMENT NO. 836 OF 2004
in
SUMMARY SUIT NO. 2392 OF 2004

Samir Doshi .. Appellant
(Original defendant no.2)

versus

Bajaj Hindusthan Limited & ors.. Respondents

...

Mr. Milind Vasudeo i/b M/s.Rajani & Associates for the Appellant.

Mr.Virag Tulzapurkar, Counsel a/w Mr.Snehal Shah i/b M/s.Dhru & Co for the Respondent no.1

Mr.C.S.Balsara a/w Mr.Vivek Kantawala i/b M/s. V. Kantawala & Co for Respondent nos. 2 & 3.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ
DATED : 22nd November 2005.

P.C.:

Admit.

2. M/s.Dhru & Co. waives service for respondent no.1. M/s.V. Kantawala & Co. waives service for respondent no.2 and 3. Service on the respondent no.4 is dispensed with being a formal

party and appeal is heard finally at this stage.

3. Interalia, the grievance raised by the learned counsel for the appellant in challenging the impugned order is that the learned trial Judge considered the contract notes which were neither produced along with the affidavit nor in respect thereof inspection was given to the appellant. Rather no opportunity was given to the appellant to have their say in respect of contract notes that were produced by the plaintiff during the course of hearing of Summons for Judgement.

3. The learned counsel for the plaintiff (respondent no.1) fairly conceded that the inspection of the contract notes upon which reliance has been placed by the learned trial Judge was not given to the defendants.

4. Having reflected over the matter, we are of the view that the impugned order cannot be sustained and has to be set aside as the learned trial Judge took into consideration the contract notes without affording an opportunity to the defendants to meet the said documents. Admittedly, neither copies of the contract notes were given to

the defendants nor inspection of the contract notes was provided by the plaintiff to the defendants.

5. We accordingly set aside the impugned order on the short ground afore-noticed and restore the Summons for Judgement no. 836 of 2004 for fresh consideration by the learned trial Judge.

6. We record and accept the statement of the Counsel for the plaintiff (respondent no.1) that inspection of contract notes shall be given to the defendants within one week from today.

7. Liberty to the defendants to apply to the learned trial Judge for filing additional affidavit or further material after the inspection of the contract notes is completed.

8. No costs.

(R.M. LODHA, J)

(D.G. KARNIK, J)